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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	
Pertaining to	)	CC Docket No. 94-54
Commercial Mobile Radio Services	)	

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF WESTERN WIRELESS CORPORATION

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TABLE OF CONTENTS

SUMMARY

In Western Wireless Corporation's ("WWC") comments to the Second Notice of Proposed Rulemaking in the captioned proceeding filed in June of 1995, WWC supported the Commission's tentative conclusion that regulatory action was not needed at that time to ensure CMRS providers would support roaming agreements between their respective systems. WWC, itself a cellular provider, believed that cellular licensees would have little incentive to deny access to their systems by other CMRS subscribers.

WWC's attempts to negotiate, as a new entrant PCS provider, automatic roaming agreements with incumbent cellular providers have quickly forced it to realize that its earlier beliefs were incorrect. In at least two instances, WWC has been wholly frustrated in its attempts to negotiate roaming agreements that would allow its PCS customers to roam onto other carriers' systems with dual-mode, dual-frequency equipment. In another instance, although WWC was able to reach a PCS-to-cellular roaming agreement with a large wireline cellular and PCS carrier, such agreement required a full nine months of negotiation and was ultimately effected, WWC believes, only because of the other party's desire to secure an agreement allowing its PCS customers to roam on WWC's cellular facilities. A small PCS carrier with the leverage of WWC's cellular markets would likely not have been able to reach an agreement. WWC's concrete experience unambiguously demonstrates the

need for Commission intervention in the form of a rule requiring automatic PCS-to-cellular roaming.

Apart from WWC's actual experience, the revenue-enhancing incentives to enter into roaming agreements appear to be counterbalanced, and indeed outweighed by significant anticompetitive incentives. Incumbent cellular carriers already have widespread roaming capability and now see themselves competing as a group against PCS as an alternative service which in the long run threatens their first-to-market advantages.

The Commission has recognized that roaming is critical to the development of competitive PCS service and has mandated that "manual" roaming regulation should be implemented. Manual roaming, however, falls short of the mark because of its lack of convenience to the end user. WWC submits that "automatic" roaming capabilities are necessary for PCS to be viewed as a viable competitive choice in the wireless market. Because market forces alone will not ensure the availability of automatic roaming for PCS carriers, the Commission must impose a mandatory transitional automatic roaming requirement. Otherwise lack of convenient roaming will stunt the growth of PCS in its infancy.

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INTRODUCTION

Western Wireless Corporation ("WWC") hereby submits its Comments on the Commission's Second Report and Order and Third Notice of Proposed Rulemaking, FCC 96-284 (released Aug. 15, 1996) in the captioned proceeding ("Second Order and Third NPRM"), specifically regarding automatic roaming obligations of commercial mobile radio service ("CMRS") licensees. Through its subsidiaries, WWC is a provider of both cellular service and personal communication service ("PCS"). Thus, WWC's comments reflect the perspective of both an incumbent cellular provider, which has several roaming agreements with other incumbent CMRS providers, and a new PCS entrant, which has found that many CMRS providers are unwilling to enter into roaming agreements with PCS licensees. Based upon this real world experience, WWC strongly urges the Commission to impose an automatic roaming requirement on CMRS providers.

ARGUMENTS

I. Regulations Regarding Automatic Roaming Between CMRS Systems Are Warranted At This Time

In WWC's comments to the Second Notice of Proposed Rulemaking in the captioned proceeding ("Second NPRM") filed on June 14, 1995,[1/] WWC supported the Commission's tentative conclusion that regulatory action was not needed at that time to ensure CMRS providers would support roaming agreements between their respective systems.[2/] At the time WWC believed that cellular licensees would have little incentive to deny access to their systems by other CMRS subscribers. WWC based its conclusion solely on its experience as a cellular system operator, not on any experience in the PCS marketplace, as WWC had only recently received the initial grant of its A Block PCS licenses and initiation of service was many months away.

Much has changed since the filing of WWC's June 14, 1995 comments. Earlier this year, WWC became the first PCS carrier to commence commercial operation of an auction-awarded PCS system, and WWC now owns four of the seven PCS systems in commercial operation today.[3/] WWC's attempts to negotiate, as a new entrant PCS provider, automatic roaming agreements with incumbent cellular providers have quickly forced it to realize that its earlier beliefs were incorrect. WWC now sees that market forces alone will not ensure the widespread availability of roaming agreements, and that regulation is necessary during

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[1/]Second NPRM, 10 FCC Rcd 10666 (1995).

[2/]WWC Comments at 6-7.

[3/]WWC began service in the Honolulu MTA in February 1996, and has since begun operations in the Portland, Salt Lake City and El Paso/Albuquerque MTAs.

a transition period to ensure that new PCS and covered SMR carriers can compete effectively against incumbent cellular providers.

A. Many Incumbent Cellular Carriers Are Resisting Automatic Roaming Agreements With PCS Providers

Automatic roaming requires a contractual agreement between a subscriber's home system and the roamed-on ("host") system.[4/] There is now ample evidence that cellular carriers are resisting automatic roaming agreements with PCS carriers in many instances. WWC's initial belief, as a cellular provider as well as a PCS provider, that the significant revenues to be gained from roaming make negotiating roaming agreements with new entrants in its financial interest, does not appear to be shared by many incumbent cellular providers.

In at least two instances, WWC has been wholly frustrated in its attempts to negotiate roaming agreements with other cellular carriers that would allow its PCS customers to roam onto the carriers' systems with dual-mode digital PCS/analog cellular equipment.[5/] In one recent case, WWC had been engaged in negotiations with a regional cellular carrier for cellular-to-cellular roaming, and in the course of those negotiations WWC attempted to secure the rights for its PCS customers to roam onto that carrier's cellular facilities. Despite months of negotiations, the carrier flatly refused to permit WWC's PCS customers to roam

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[4/]Second Order and Third NPRM at 4-5.

[5/]The urgency of the situation cannot be overstated. Western has committed millions of dollars under a contract with Nokia to acquire dual-mode handsets, and Nokia is committed to deliver the first of these handsets by the beginning of 1997. Failure of cellular carriers to enter into automatic roaming agreements with WWC in very short order will have an immediate material adverse affect on WWC's ability to provide seamless coverage to its PCS customers and, in many instances, to attract or retain customers.

onto its cellular facilities. The carrier even made it clear that any efforts by WWC to provide its PCS customers with dual-mode phones that might be indistinguishable to the carrier from WWC's cellular phones would result in the carrier's refusal to permit any of WWC's cellular customers to roam in its cellular markets.[6] Such carrier's refusal to allow WWC's PCS subscribers to roam in its markets, even at the cost of losing the revenues from WWC's PCS and cellular subscribers, indicates that market incentives are entirely insufficient to promote the availability of roaming.

WWC has reached a similar impasse in its attempts to negotiate a PCS-to-cellular roaming agreement with a large wireline cellular carrier. Simply put, this carrier has refused to discuss any arrangement by which WWC's PCS customers could roam into that carrier's cellular territory.[7] Of particular significance is the fact that this carrier has demonstrated this intransigence despite the fact that another entity within its same corporate family has PCS markets that are adjacent to and in the vicinity of WWC's cellular and PCS markets and has demonstrated an interest in entering into PCS-to-PCS and PCS-to-cellular roaming agreements with WWC.

Finally, even though in another instance WWC was able to reach a PCS-to-cellular roaming agreement with another large wireline cellular and PCS carrier, such agreement required a full nine months of negotiation and was ultimately effected, it seems, only

[6]It is worth noting that some of WWC's and Cook Inlet Western Wireless PV/SS PCS, L.P.'s ("Cook/Western's") PCS markets overlap with some of that carrier's cellular service areas. WWC holds a 49.9% limited partnership interest in Cook/Western, which holds 13 C Block BTA's and was the high bidder for a 14th in the recently concluded C Block reauction.

[7]There is overlap between this carrier's cellular footprint and WWC's and Western Cook's PCS markets.

because of the other party's desire to secure an agreement allowing its PCS customers to roam on WWC's cellular facilities.

It has been shown in each of the above instances that there were other circumstances tending to promote WWC's ability to reach PCS-to-cellular roaming agreements (i.e., the risk of the other carrier's losing cellular-to-cellular, not just PCS-to-cellular, roaming revenues or not being able to reach agreement to allow its PCS customers to roam onto WWC's cellular facilities), even though in two cases WWC still failed. It thus can only be surmised just how difficult it would be for a PCS carrier to reach an agreement with a cellular carrier in the absence of such negotiating strengths. WWC's concrete experience unambiguously demonstrates the need for Commission intervention in the form of a rule requiring automatic PCS-to-cellular roaming.

B. Significant Anticompetitive Incentives Exist

WWC's actual experiences have shown that he revenue-enhancing incentives to enter into roaming agreements are counterbalanced and in some cases outweighed by significant anticompetitive incentives. Certain cellular carriers would naturally have a strong incentive to deny roaming capability to new entrants which did not exist during the development of cellular service, because the now established carriers already have widespread roaming capability. Many cellular carriers currently see themselves competing as a group against PCS as an alternative service which in the long run threatens their first-to-market advantages. Short run roaming revenue may not be worth giving up the most important distinguishing feature of their service that cellular providers can currently claim: widespread roaming capability.[8] While certain incumbent cellular providers may offer economic theories about how "foregone profit opportunities" will ensure that PCS providers get roaming capabilities, the behavior of those cellular providers in the market is quite different. As Dr. Jerry A. Hausman, McDonald Professor of Economics at MIT, stated in this proceeding, theories about "foregone profit opportunities" fail "to consider the increase in revenue that a cellular provider would gain in a region if PCS is made less attractive by its inability to provide out of region roaming services."[9]

Accordingly, it would seem that the "foregone profit opportunities" theory, at best, would apply only to smaller cellular carriers, in view of the different motivations and planning horizons of small versus larger providers. Smaller carriers may not have the luxury of taking a long term view when developing a business plan. Smaller carriers may depend upon short run revenue enhancements for their very viability and therefore agree to automatic roaming, despite their view of PCS carriers as a long term threat. Larger cellular

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[8]Lack of PCS roaming capability provides certain incumbent cellular companies with a marketing advantage, not an incentive to permit PCS roaming. Since the introduction of PCS competition in the Washington/Baltimore market, advertising by incumbent cellular companies has focused almost exclusively on lack of roaming capability by PCS operators. See "PCS Roaming: Critical to the Success of CMRS Competition" attached to Letter from Eric W. DeSilva, counsel for the Personal Communications Industry Association, to William Caton, FCC, dated March 21, 1996 ("March 1996 PCIA Ex Parte"). For example, a Bell Atlantic NYNEX advertisement from the December 19, 1995 Washington Post states: "How [do] Sprint Spectrum wireless users make calls outside the greater Washington/Baltimore area[?] It's simple, if they have a quarter. Because once they leave Sprint's very limited service area, their wireless phone can't make a call." March 1996 PCIA Ex Parte at 3.

[9]Affidavit of Professor Jerry A. Hausman, Attachment to Pacific Reply Comments, at 7-8 ("Hausman Affidavit").

carriers, on the other hand, will be ready and able to give up short term revenues to thwart the development of a long term competitor.

Larger cellular and PCS carriers also carry considerably greater bargaining clout. It is interesting to note that Pacific Telesis Group recently ceased actively urging the Commission to adopt a mandatory roaming rule "because it now believe[s] that agreements would be concluded with other commercial mobile radio service providers which ma[kes] it unnecessary to continue such advocacy."[10/] Pacific Telesis Group, which had been one of the staunchest supporters of a mandatory roaming rule in this proceeding, was concerned up until the moment that it was able to secure its own roaming agreements that even it -- a telecommunications giant -- would have trouble with such negotiations.[11/] Smaller PCS carriers such as WWC are finding that they do not have the bargaining weight to effect roaming agreements for their PCS subsidiaries.

Smaller PCS carriers that are not part of a larger telecommunications group will be further disadvantaged, because those cellular carriers that do sign automatic roaming agreements will likely discriminate in favor of their affiliates. A CMRS licensee's roaming partner, if a non-affiliated competitor, may use roaming as an anticompetitive tool.[12/] In

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[10/]Letter from Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group - Washington, to William F. Caton, Acting Secretary, FCC, dated June 25, 1996 ("June 1996 Pacific Ex Parte").

[11/]Note that the Personal Communications Industry Association ("PCIA") has shifted its position on roaming regulation. Compare PCIA Comments at 7-9 (Commission action on roaming is undesirable) with the letter from Mark J. Golden, Vice President, Industry Relations, PCIA to Michael Wack, Deputy Chief, Policy Division, Wireless Telecommunications Bureau dated June 20, 1996 ("June 1996 PCIA Ex Parte") at 2 (cellular carriers should not be permitted to treat PCS carriers differently than cellular carriers).

[12/]See Comcast Comments at 21-22.

particular, a carrier with affiliates in multiple markets may, in the absence of a rule, charge its affiliates little or nothing for roaming, but charge unreasonably high roaming rates to non-affiliated roamers. Cellular carriers often have not offered each other nondiscriminatory roaming agreements. A Commission policy that prevents roaming rate discrimination that unreasonably favors the customer or carrier of an affiliate of the carrier is essential to promote competition.

It is absolutely clear that the goal of some carriers is to piece together ubiquitous coverage through a patchwork of owned cellular and PCS markets. AT&T Wireless, for example, has put together a nationwide map dovetailing its cellular and PCS systems. WWC has done the same thing on a smaller scale in the western United States. This business model is based upon the ultimate needs and preferences of subscribers. Allowing established carriers to thwart implementation of ubiquitous coverage of a commercially viable (i.e., including automatic, not manual, roaming) competitive service would effectively shut the door on smaller businesses -- entities which the Commission is obliged to promote under the Omnibus Budget Reconciliation Act of 1993.

Commissioner Chong, in her separate statement to the Second Order and Third NPRM, declared that if actual evidence was proffered to the Commission that incumbents are denying reasonable automatic roaming arrangements to new entrants in a discriminatory manner for anticompetitive reasons, she would "support taking swift corrective action."[13/] The evidence is clear, and the necessary corrective action is the immediate requirement of nondiscriminatory automatic roaming.

[13/]Separate Statement of Commissioner Chong at 2.

C. Automatic Roaming Obligations Are Warranted Because Manual Roaming Will Not Allow Meaningful Competition

The Commission has recognized that roaming is critical to the development of competitive PCS service and that some regulation of roaming is necessary. In its Second Order and Third NPRM, the Commission concluded that:

> the availability of roaming on broadband wireless networks is important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications, and that, during the period in which broadband personal communications services (PCS) systems are being built, market forces alone may not be sufficient to cause roaming to become widely available.[14/]

The Commission therefore expanded the scope of its existing cellular "manual" roaming rule[15/] to include other CMRS providers that offer comparable services (such as PCS providers).[16/] WWC submits that expanding the manual roaming rule without similarly requiring nondiscriminatory "automatic" roaming will prevent convenient, user-friendly roaming from becoming widely available to PCS providers and will stifle viable competition in the wireless marketplace.

As described in the Second Order and Third NPRM, manual roaming requires that a wireless subscriber wishing to make or receive a call outside her home system must establish a relationship with the system she is in, typically by giving a valid credit card number to the carrier providing service when she attempts to originate a call. Automatic roaming allows a roaming subscriber to originate or terminate a call without taking any action other than turning on her telephone.

[14/] Second Order and Third NPRM at 3.

[15/] 47 C.F.R. § 22.901.

[16/] Second Order and Third NPRM at 3.

Experience has shown that the more steps required by the end user to utilize a particular service, the less attractive that service will be in the marketplace. For example, after the break-up of AT&T when MCI and Sprint initiated long distance telephone service, a caller using MCI or Sprint was required to enter identification numbers and access codes as well as the telephone number she wished to reach. Despite clear price savings, growth of MCI and Sprint was necessarily affected by the lack of calling convenience. The Commission's recent Interconnection and Local Competition Order[17/] contained a highly relevant discussion of this subject:

> The history of competition in the interexchange market illustrates the critical importance of dialing parity to the successful introduction of competition in telecommunications markets. Equal access enabled customers of non-AT&T providers to enjoy the same convenience of dialing "1" plus the called party's number that AT&T customers had. Prior to equal access, subscribers to interexchange carriers . . . other than AT&T often were required to dial more than 20 digits to place an interstate long-distance call. Industry data show that, after equal access was deployed throughout the country, the number of customers using MCI and other long-distance carriers increased significantly. Thus, we believe that equal access had a substantial pro-competitive impact.[18/]

Manual roaming is directly analogous, and presents an even more compelling case. The inconvenience of any additional steps required to place calls is heightened in the context of wireless telephones by the nature of their mobile use. A typical roamer driving in her car may not have the necessary identification numbers and access codes readily and

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[17/]First Report and Order(In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Service Providers) CC Docket Nos. 96-98 and 95-185, FCC 96-325 (released Aug. 8, 1996) ("Interconnection and Local Competition Order").

[18/]Interconnection and Local Competition Order at 13 (citation omitted).

safely available to place a manual roaming call. Moreover, it is expected that PCS providers will be hard-pressed to compete initially on a price basis with cellular providers because of the enormous cost of obtaining PCS licenses. This means that the main competitive advantage long-distance carriers such as MCI and Sprint enjoyed in their infancy, namely substantial price savings, cannot be expected in the PCS arena.

Meaningful competition in the wireless market requires that the burden of utilizing available technology be made invisible to the end user, or, in other words, that the process be made "automatic." The Commission realized this in mandating that long distance callers not be required to enter inconvenient access codes and should do the same thing here.

D. An Automatic Roaming Requirement Is Consistent With The Commission's General Goals And Policy

The ultimate goals of the Telecommunications Act of 1996, as repeated in the Second Order and Third NPRM,[19] are to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. Deregulation is not the Commission's ultimate goal, but only a means to an end.[20] Rapid deployment of ubiquitous PCS coverage is essential to the competitive viability of PCS, and this will not happen with manual roaming obligations alone. To the extent that roaming makes PCS more attractive, PCS providers would have an economic incentive to build out

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[19] Second Order and Third NPRM at 2.

[20] For example, in the First Report and Order, FCC 96-163 (released July 12, 1996) issued in this docket, the Commission imposed a transitional resale obligation on PCS providers under the belief that, today, market forces are not sufficient to bring about voluntary resale agreements. Id. at 16.

their networks more quickly.[21] The more quickly PCS networks are built out, the sooner PCS will be in a position to compete vigorously and to achieve the Commission's ultimate goals of lower prices and higher quality services.

The Commission must impose regulation in this instance to encourage the rapid deployment of the new PCS technology in the face of demonstrated anticompetitive behavior by certain incumbent CMRS carriers.[22] Because the Commission has depended on future PCS services to provide competition to cellular networks, a transitional roaming requirement which facilitates this competition will be in the public interest.[23] The lack of a nationwide standard for PCS exacerbate the problem, because of the technological problems in roaming between different PCS protocols. Until enough systems are up and running, a transitional roaming requirement ensuring PCS-to-cellular roaming is needed for PCS service to be available at all; otherwise market failures will occur.[24] Transitional rules will increase consumer welfare by preventing the loss of competition.[25]

To enable PCS networks to compete with the systems that existing cellular carriers in many instances have had over ten years to construct, PCS carriers must establish roaming

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[21] Statement of Jerry A. Hausman, filed as attachment to Letter from Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group - Washington, to William F. Caton, Acting Secretary, FCC, dated March 19, 1996, at 4-5 ("Hausman Statement").

[22] WWC supports the Commission's position that such regulation should sunset five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded. Second Order and Third NPRM at 3, 18.

[23] Hausman Statement at 5.

[24] Hausman Affidavit at 5-8, Hausman Statement at 2-5.

[25] Id.

agreements. At this time, only the Commission's imposition of an automatic roaming requirement will effectuate the goal of rapid development of seamless coverage needed for viable competition.

E. Regulation Would Not Be Unduly Costly and Burdensome

Under transitional roaming requirements, cellular providers should not have to incur any further expense or provide any additional facilities beyond the current. The CMRS provider seeking roaming capabilities for its subscribers must provide its customers with a dual-mode, dual-frequency handset to enable roaming and thus bear essentially all of the costs of roaming. Roaming PCS subscribers' calls will appear no different to cellular carriers[26/] and will require no additional equipment investment or costs beyond those imposed by cellular roaming agreements.[27/]

CONCLUSION

For the foregoing reasons, WWC urges the Commission to take swift corrective action to prevent incumbent cellular carriers from denying reasonable automatic roaming arrangements to new entrants for anticompetitive reasons. WWC urges the Commission to adopt rules governing cellular, broadband PCS and covered SMR providers' obligations to provide automatic roaming service. These automatic roaming requirements should sunset

[26/] June 1996 PCIA Ex Parte at 1.

[27/] March 1996 PCIA Ex Parte at 3.

five years after the Commission awards the last group of initial licenses for currently allocated broadband PCS spectrum.

Respectfully submitted,

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